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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/292,286	08/18/1994	MURRAY E. STANLEY JR.	56292	4678

24243 7590 03/03/2005

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SAN DIEGO, CA 92108-3412

EXAMINER
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PASCUA, JES F

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

08/292,286

Applicant(s)

STANLEY, JR.

Examiner

Jes F. Pascua

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3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 4,7-18,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 7-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-18,20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 20, line 17, "the open end of the bag" lacks antecedence.

In claim 20, line 18, "the closed end of the bag" lacks antecedence.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Herwood.

Herwood discloses a storage bag comprising a hollow interior 22 and access opening, a rigid member 32 extending along the top edge of the bag, means 28, 30 for securing the bag to an object. The bag comprises a body of open mesh material (column 3, lines 29-35) stitched along opposite side edges 16, 18 with free ends of the body, via sheet 12, being secured to the rigid member 32.

The recitation "combined warning flag" in claim 16 imparts no structure to the claim. Therefore, having met the claimed structure, the storage bag of Herwood is inherently capable of acting a combined warning flag.

5. Claims 16-18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Conner.

O'Conner discloses a storage bag comprising a hollow interior 26 and access opening 16, a rigid member 46 extending along the top edge of the bag, means 50 for securing the bag to an object. The bag comprises a body of open mesh material stitched along opposite side edges 22, 24 with free ends of the body, via panel 34, being secured to the rigid member 46.

The recitation "combined warning flag" in claim 16 imparts no structure to the claim. Therefore, having met the claimed structure, the storage bag of O'Conner is inherently capable of acting a combined warning flag.

Regarding claim 17, the rigid member 46 meets the structure of the claimed "flange" and is considered to be "secured between the free ends of the bag" to the same degree as claimed.

Regarding claim 18, the bore openings 50 of O'Conner meet the recited "plurality of openings extending transversely" and are inherently capable of "receiving tie-down straps or other fasteners; and...receiving and[sic] end of a strap".

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Conner.

O'Conner discloses the claimed invention except for the open weave mesh material comprising PVC plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to PVC plastic for the open weave mesh material of O'Conner, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Furthermore, the rigid member 46 of O'Conner meets the structure of the claimed "header bar" and "flange" and closes the open end of the bag when used in conjunction with elastic insert 44.

***Response to Arguments***

8. Applicant's arguments with respect to claims 16-18, 20 and 21 have been considered but are moot in view of the new grounds of rejection.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

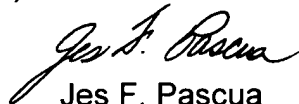
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jes F. Pascua  
Primary Examiner  
Art Unit 3727

JFP